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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1959

**No. 793.**

SINCLAIR OIL & GAS COMPANY,
*Petitioner,*

*v.*

R. B. MASTERSON, *et al.*,
*Respondents.*

*ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.*

## PETITION FOR REHEARING.

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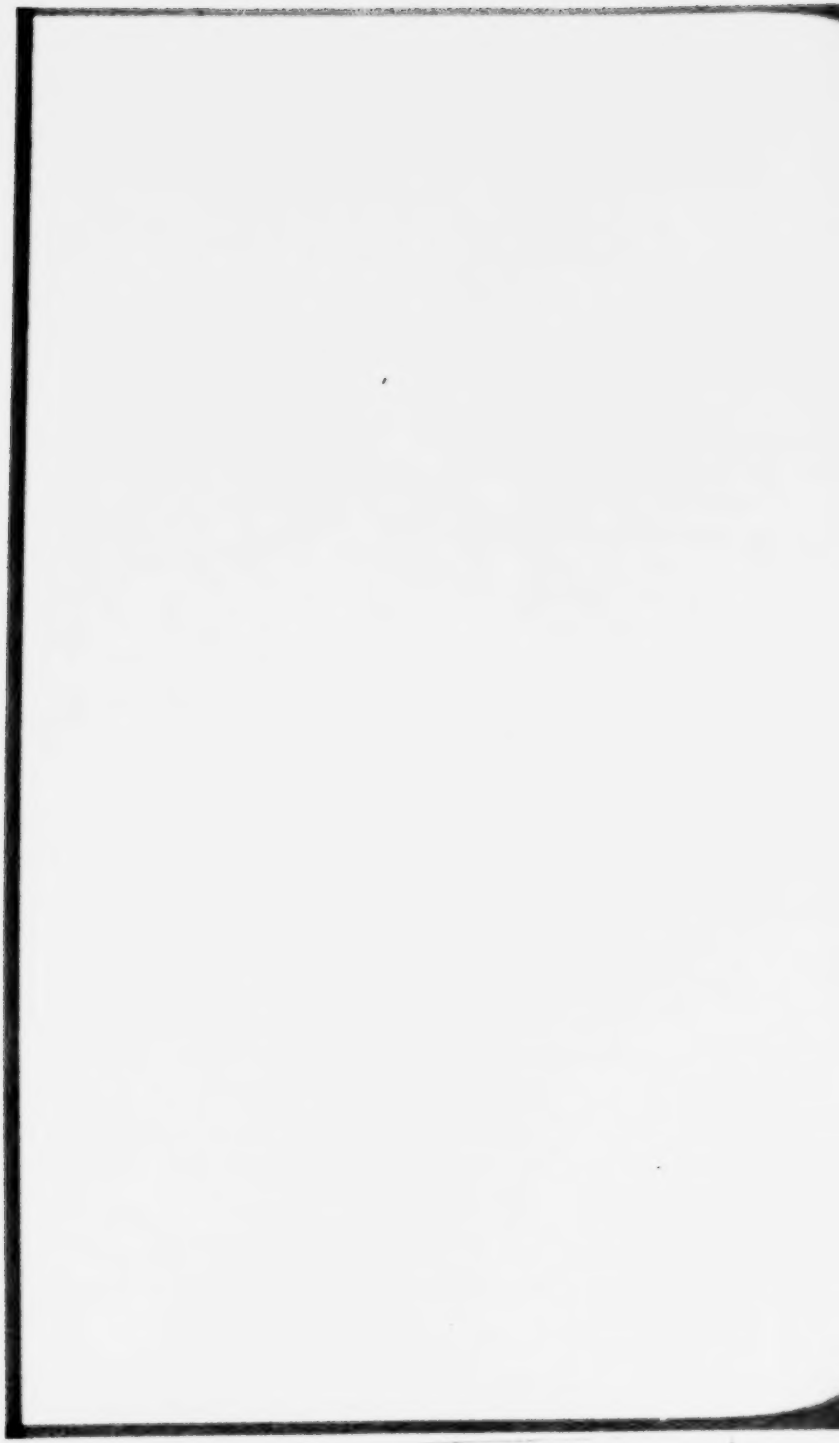

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TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

## PETITION FOR REHEARING.

Petitioner, Sinclair Oil & Gas Company, prays that this Court vacate and set aside its order made herein on April 18, 1960, denying the Petition for a Writ of Certiorari and now moves that such Petition be granted and that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case.

## The Grounds of This Petition for Rehearing.

Since the filing on March 16, 1960 of the Petition for a Writ of Certiorari herein, an intervening circumstance of substantial and controlling effect has arisen, to-wit., the decision of the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas rendered by that Court on March 30, 1960 in the case of *Felmont Oil Corporation, et al.*, v. *Pan American Petroleum Corporation, et al.*, which decision is not yet reported.

## Argument.

The decision in the *Felmont* case was rendered on March 30, 1960 in El Paso, Texas. It was not and could not have been included and discussed in the Petition for a Writ of Certiorari which was filed on March 16, 1960. The decision was not discussed in Respondents' brief in opposition to the petition. That brief apparently was written before the decision in the *Felmont* case was released. As soon as Petitioner learned of the *Felmont* decision, it took immediate steps to obtain a certified copy thereof. It was not received until April 12, 1960. Petitioner then prepared a short Reply Brief discussing the *Felmont* decision and attached thereto a copy of the full opinion as Appendix "A". It was not possible to prepare and file the Reply Brief discussing the *Felmont* decision before the early afternoon of Thursday, April 14, 1960. Since the Reply Brief calling the decision in the *Felmont* case to the attention of the Court was not filed until on the eve of Good Friday, it is thought that possibly this Court did not have an opportunity to consider the Reply Brief and the decision in the *Felmont* case and that this Court may have rendered its decision of April 18, 1960, denying the Petition for a Writ of Certiorari, without having considered such decision.

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Because of the great importance of this matter not only to the parties hereto but to the public, the bench and the bar in the State of Texas, it is felt that it is the duty of Petitioner to make every effort to call this Court's attention to the decision in the *Felmont* case.

The basis upon which Petitioner filed its Petition for a Writ of Certiorari is that the decision of the Court of Appeals in this case is in conflict with the decision of the Supreme Court of Texas in the *Clifton* v. *Koontz* case, 325 S. W. 2d 684. It was stated in the Petition that there already existed a conflict of decisions, and that the Courts of Texas would probably in the future follow the decision of the Supreme Court of Texas in the *Clifton* case and refuse to follow the decision of the Court of Appeals in the case before this Court, thereby creating more conflicts and uncertainties in the law. It was not at that time anticipated, however, that another case involving an implied covenant to explore would arise so soon, as did arise in the *Felmont* case. In that case the Court expressly stated that it refused to follow the decision of the Court of Appeals in the case before this Court but that it would and did follow the decision of the Supreme Court of Texas in the *Clifton* case. Within approximately two weeks after the Petition herein was filed, the Court in the *Felmont* case specifically and expressly stated: "We decline to follow the *Masterson* case."

The decision of the Court below is of great importance to the public and to the citizens of the State of Texas, and to the great oil industry in that State, to the lessors or landowners and lessees of oil and gas leases. There is a clear conflict in the law applicable to the question of an implied covenant requiring a lessee to drill exploratory or wildcat wells. The State Supreme Court of Texas, followed by the Court of Civil Appeals of that State, expressly

holds that there does not exist under the law of Texas an implied covenant to drill exploratory wells. The law as declared by the Circuit Court of Appeals in the case before this Court is to the effect that there does exist an implied covenant to drill exploratory wells, and that such wells must be drilled or the lease forfeited. This conflict of decisions in the State of Texas is clearly shown by the decision of the El Paso Court of Civil Appeals in the *Felmont* case.

This Court has held in many cases arising under the Rules of Decision Act, (Title 28 U. S. C. A. Sec. 1652) that in cases where the Federal Court obtains jurisdiction by reason of the diversity of citizenship, the Federal Court must apply the substantive law of the State wherein the case arose. This the Court of Appeals in the case before this Court failed and refused to do.

This Court is respectfully referred to Appendix "A" attached to Petitioner's Reply Brief wherein there is set out the full opinion of the Court of Civil Appeals of Texas in the *Felmont* case. A certified copy of that opinion has been filed with the Clerk of this Court.

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## Conclusion.

For these reasons, it is respectfully requested that this Honorable Court grant this Petition for Rehearing and that the Petition for a Writ of Certiorari be granted, and for such further relief as this Court may deem just, equitable and proper.

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Attorneys for Petitioner,
Sinclair Oil & Gas Company

## Certificate.

I, NAT. J. HARBEN, Counsel of Record for Sinclair Oil & Gas Company, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that the within Petition For Rehearing is filed and presented in good faith and not for the purpose of delay.

I further certify that since the filing of the Petition for a Writ of Certiorari herein on March 16, 1960, an intervening circumstance of substantial or controlling effect has arisen, to wit., the decision of the Court of Civil Appeals in the State of Texas in the case of *Felmont Oil Corporation, et al.*, v. *Pan American Petroleum Corporation, et al.*, which decision was rendered on March 30, 1960 but is not yet reported. Although an attempt was made by Petitioner to call such decision to the attention of this Court in Petitioner's Reply Brief, and a copy of said decision was attached thereto as Appendix "A", but the Reply Brief was filed so late, and was filed on the eve of Good Friday, the Court may not have had an opportunity of examining same.

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NAT. J. HARBEN

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## Proof of Service.

I, NAT. J. HARBEN, Counsel of Record for Sinclair Oil & Gas Company, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 9th day of May, 1960 I served a copy of the foregoing Petition For Rehearing on attorneys for R. B. Masterson, *et al.*, Respondents, by mailing a copy airmail postage prepaid in an envelope addressed to Culton, Morgan, Britain & White, attention Mr. D. H. Culton, P. O. Box 189, Amarillo, Texas.

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NAT. J. HARBEN